"It is quite clear from the definition of 'State land' in section 2 of the Land Code of Selangor that land held under an approved application is State land and it is clear by section 18 of the Code that the approved applicant has no right to registration of title. All that the approved applicant has is 'rights by way of expectation of title to the land' as stated by rule 12 of the Land Rules, 1930. These rights are capable of assignment provided that rule 12 is complied with. Rule 12 requires that prior permission be obtained by the approved applicant to assign his rights by way of expectation of title to a third party and that the application for permission shall be made in the form given in Schedule V to the Rules. The Collector has the power to refuse such transfer and there is provision for an appeal to the Ruler."

Thomson C.J., as he then was, said in the same case at page 184:—

"....there can be no question of any property in land occupied under approved application being vested in the occupant and to ascertain what rights the occupant has in relation to such land it is necessary to look to section 18 of the Code and rules 7 to 15 of the Land Rules. Briefly, these rights are that he is entitled to occupy the land, that he has certain contingent rights to registration of title, and that in certain conditions he may subject to the consent of the Collector assign his rights as approved applicant *tanta et talia*. He cannot, however, assign more than he himself has, *non dat qui non habet* and rule 10 of the Rules makes it clear that no dealing in his rights can in any circumstances be capable of registration."

Ong J. at page 188 said:—

"....It is implicit in rule 10 of the Land Rules that freedom of contract is not struck at, but that only no dealings in land comprised in an approved application shall be capable of registration."

With the above statement of the law I respectfully agree.

Sapiah, the original approved applicant, and the appellant in this case were doing no more than entering into a contract for the assignment to the latter of the former's right to expectation of title. Under that contract, which was embodied in the assignment, Sapiah agreed to transfer her right of occupation to the appellant. Until the assignment was registered the appellant, in my opinion, became a licensee of Sapiah and consequently became entitled to occupation and possession of the land. Sapiah herself had divested herself of any right of possession by executing the form of assignment. The first respondent at no time had any right or title to possession and consequently could pass no such rights to the second respondent. In the circumstances as from the date of execution of the assignment by Sapiah the appellant became entitled to possession and therefore was entitled to sue for recovery of possession. The first respondent at some time or other may have been a licensee of Sapiah, but ever since Sapiah executed an assignment of whatever rights she had to the land in favour of the appellant he became and has ever since remained a trespasser on the land. I would therefore allow the appeal, set aside the magistrate's order of dismissal of the action and make an order that the respondents do forthwith deliver up vacant possession of the land to the appellant and that the first respondent do pay damages for trespass and unlawful occupation at the rate of $35 per month from the 21st of November, 1961 to the date on which he gives up vacant possession. The respondents must pay the costs of this appeal and of the action in the lower court.

Appeal allowed.

Solicitors: *Eugene Lye & Co.; K. Chelvanayagam.*

LASOO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.C.) November 30, 1964]

[Sibu — Criminal Appeal No. CA/14/64]

Dangerous Drugs — Importing raw opium — Sentence — Trafficking in opium — Necessity to apply for disposal of seized property — Dangerous Drugs Ordinance (Cap. 119), ss. 4(1) and 6.

This was an appeal against sentences imposed on the appellants who were convicted on charges of importing raw opium and possession of opium under section 4(1) and (6) of the Dangerous Drugs Ordinance. They were sentenced to two years imprisonment on the 1st charge and 15 months imprisonment on the 2nd charge. No application was made for the disposal of the opium in the lower court.

Held: (1) where a person is found to have possession of opium in such quantity as to show positively and convincingly that he is engaged in trafficking in such drug the proper sentence is a deterrent sentence. A fine can never be a deterrent sentence;

(2) an application for the disposal of the seized property, the opium in this case, should have been made in the lower court as soon as the court had delivered judgment.

Case referred to:—

(1) *Yong Chiau & Ors.* v. *Public Prosecutor* [1958] S.C.R. 1.

MAGISTRATE'S CRIMINAL APPEAL.

Appellants in person.

Inspector Idris for the Public Prosecutor.

Lee Hun Hoe J.C.: Appellants were jointly charged in the District Court, Sibu, with importing raw opium and possession of said opium under section 4(1) and section 6 of the Dangerous Drugs Ordinance. They pleaded guilty to the 2nd charge and claimed trial on the 1st charge. They were tried and found guilty of the 1st charge. Each was sentenced to two years' imprisonment on the 1st charge and fifteen months' imprisonment on the 2nd charge. The sentences were to run concurrently. Against these sentences they appealed.

Before I deal with the appeals there is one matter I think I should mention. As soon as the lower court had delivered judgment the prosecuting officer should make an application for a

disposal order of the opium. If no disposal order is made considerable inconvenience may result. Also if the appellants succeeded in these appeals against conviction difficulty would arise. It may be useful if I refer to *Yong Chiau & Three others* v. *Public Prosecutor* [1] where in the course of his judgment at page 4 Williams C.J. said:

"At the conclusion of the case when the magistrate had found the appellants guilty and pronounced sentence it was the duty of the prosecuting officer to make application to him under section 357(2) of the Criminal Procedure Code for the disposal of the property seized. No such application was, however, made. At the hearing of the appeal the deputy legal adviser, in answer to a question by me, stated that the confiscated property was now in court and that he would ask for my order. As I have said such an order should have been asked for and obtained in the court below in open court immediately after the conclusion of the trial. If there had been no appeal, I am quite sure that the police would later have obtained an order from the magistrate but the appellants and the other convicted persons might not have been present to hear the order. They might, therefore, be left with the impression that the articles seized or some of them were kept by the police for themselves. Justice, as is often said, must not only be done but it must be manifest to those most concerned that it is being done. Applications should always be made in open court to the magistrate for a disposal order, where property has been seized, immediately after he has given judgment."

The learned magistrate before passing sentence had realised that the appellants were probably small links in a long chain of drug traffickers and that their rewards might be small compared with the profits of the organisers. One can always be sympathetic to the unfortunate addicts, some of whom are known to have been smoking opium in pre-war days when smoking opium was legal. Traffickers on the other hand cannot expect sympathy. Importation and possession of opium are serious offences. Opium is a dangerous drug which brings untold misery to an addict.

When a person is found to have possession of opium in such quantity as to show positively and convincingly that he is engaged in trafficking in such drug the proper sentence is a deterrent sentence. A fine can never be a deterrent sentence in a case of this nature. It is true that appellants might be carriers and were necessary tools to the organisation. Nevertheless they were just as guilty as the traffickers. They acted as carriers with their eyes wide open and realised the risk they took.

There is no reason for me to disturb the sentences imposed by the learned magistrate. If I may say so the sentences were not excessive in any way. Accordingly I dismissed the appeals.

Appeals dismissed.

KWAN SUN MING v. CHAK CHEE HING

[F.C. (Wylie C.J. (Borneo), Suffian and Gill JJ.) December 1, 1964]

[Jesselton — Federal Court Civil Appeal No. 90 of 1964]

Contract — Timber — Towage — Breach — Defence of "act of God" because of storm — Finding of trial judge — Measure of damages — Evidence of usage.

This was an action for damages for breach of contract or alternatively damages for negligence arising out of a contract to tow 303 logs from Kampong Abai to Sandakan. The defence was that the 253 logs were lost in a storm so violent as to amount to an "act of God" and the defendant should be excused from all liability for damages. The learned judge held that although there was a storm it was not a storm violent enough to be regarded as an "act of God" and gave judgment against the defendant and awarded the plaintiff damages based on the cost at which the logs were purchased.

Held: (1) there was no justification for interfering with the finding of the learned trial judge on the question whether the storm amounted to an "act of God" because his finding was based on all the evidence given in this case;

(2) there was no evidence to establish usage and the damages must be assessed on the proper value of the logs, that is the value of the logs at the place of delivery.

FEDERAL COURT.

W. K. Loo for the appellant.

A. F. H. Crawshaw for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): This is an appeal against the decision of the Honourable Mr. Justice Simpson given at Sandakan on 17th September, 1964. The original claim was for damages for breach of contract or alternatively damages for negligence. Judgment was given against the first defendant solely on the claim for breach of contract and the claim against the second defendant, which was based on negligence, was dismissed.

The claim arises from a contract to tow 303 logs from Kampong Abai on the Kinabatangan river to Sandakan. The respondent had purchased the logs at a nearby kampong and had contracted with the appellant to tow these logs by sea to Sandakan. When the launch and logs arrived at Sandakan there were only 50 logs. The other 253 logs were never found despite a two-day search. The claim is for the value of these 253 logs for breach of this contract to deliver the logs to Sandakan. Judgment was based on non-delivery. From that judgment the appellant has appealed on several grounds.

The only defence to the whole claim put forward in the court below was that these logs were lost in a storm so violent as to amount to "an act of God", and thus the appellant asked to be excused from all liability for damages. It must be conceded that that would have been an adequate defence to this claim. I refer to *Halsbury*, 3rd edition, Vol. 8, p. 183 for a concise